

CHAPTER 75-03-40
LICENSING OF QUALIFIED RESIDENTIAL TREATMENT PROGRAM PROVIDERS

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75-03-40-01. Definitions.

As used in this chapter:

1. "Accredited" means to be accredited and in good standing by an independent, not-for-profit organization approved by the department. Accreditation organizations preapproved include the commission on accreditation of rehabilitation facilities, the joint commission, or the council on accreditation. Any other accrediting bodies must be approved by the federal health and human service office before the department can consider approval.
2. "Aftercare" means followup support and services provided to a resident and family after discharge from a facility.
3. "Assessment" means the ongoing process of identifying and reviewing a resident and the resident's family's strengths and needs based upon input from the resident, the resident's family, and others, including community members and health professionals.
4. "Behavior management" means techniques, measures, interventions, and procedures applied in a systematic fashion to prevent or interrupt a resident's behavior and promotes positive behavioral or functional change fostering resident self-control.
5. "Care plan" or "case plan" means the plan developed by the child and family team that incorporates formal and informal services and supports into a comprehensive, integrated plan that, using the identified strengths of the resident and the resident's family, addresses the needs of the resident and the resident's family across life domains to support the resident and the resident's family to remain in or return to the community.
6. "Child and family team" means an advisory or recommending group in relation to the resident's case plan. The custodial agency and child and family team, led by the resident and the resident's family, shall work cooperatively through multiagency and multidisciplinary approaches to provide a wider variety of support services to the resident, the resident's family, and foster care provider to carry out the permanency goals for the case plan.
7. "Contracted service providers" means a person or entity under contract or agreement with the facility to provide services and supports to residents.
8. "Custodian" means a person, other than a parent or guardian, to whom legal custody of the resident has been given by court order.
9. "Employee" means an individual compensated by the facility to work in a part-time, full-time, intermittent, or seasonal capacity for the facility. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
10. "Facility" means a qualified residential treatment program.
11. "Guardian" means a person who stands in loco parentis to a resident or court appointed pursuant to North Dakota Century Code chapters 30.1-27 or 30.1-28.
12. "License" means a facility that is either licensed by the department or approved by the department if the facility is located within a tribal jurisdiction.

13. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident may not easily remove which restricts freedom of movement or normal access to the resident's body.
14. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern providing a specific service under the supervision of an employee.
15. "Normalcy" means a resident's ability to easily engage in healthy and age or developmentally appropriate activities that promote the resident's well-being, such as participation in social, scholastic, and enrichment activities.
16. "Nurse" means a nurse licensed in accordance with North Dakota Century Code chapter 43-12.1.
17. "Outcomes" means the results to which all performance targets must contribute, describing specific states or conditions that change, and which are influenced by the achievement of performance targets.
18. "Overnight hours" means a consecutive eight-hour period of time designated as resident sleep hours defined by the facility.
19. "Personnel" means employees hired and nonemployees placed with or present in the facility.
20. "Qualified individual" means a trained professional or licensed clinician designated by the department to complete the assessment, which will assist in determining the resident's appropriate level of care.
21. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a resident while at the same time encouraging the emotional and developmental growth of the resident participating in extracurricular, enrichment, cultural, and social activities.
22. "Resident" means an individual under the age of twenty-one admitted to and residing in the facility.
23. "Restraint" means a personal restraint that only involves an application of physical force without the use of any device, for the purpose of restraining the free movement of a resident's body.
24. "Seclusion" means involuntarily confining a resident alone in a room or area where the resident is prevented from leaving.
25. "Trauma informed" is the services or programs to be provided to or on behalf of a resident and the resident's family under an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma in accordance with recognized principles of a trauma informed approach and trauma specific interventions to address trauma's consequences and facilitate healing.
26. "Trauma informed treatment" means a treatment model designed to address the identified needs, including clinical needs as appropriate, of the resident with serious emotional or behavior disorders or disturbances and is able to implement the treatment identified for the resident by the assessment completed by the qualified individual.
27. "Treatment" means the use of interventions that prevent or cure disease, reducing symptoms, and restoring the resident to the highest practical functional level.

28. "Treatment plan" means a plan created by the facility which delineates goals, objectives, and therapeutic interventions regarding the appropriate level of care based on the uniqueness of each resident, which considers the perspectives of the resident, the resident's clinical treatment team, family and significant others, which builds on the resident's strengths, and which incorporates a discharge focus.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-00.1, 50-11-03

75-03-40-02. Effect of license.

1. A facility license shall state the effective date. A license is effective for a maximum period of two years. A facility license is nontransferable and is valid only on the premises and for the number of residents indicated on the license.
2. For a licensed facility that changes its ownership or for a provisionally licensed facility upon issuance of an unrestricted license:
 - a. The initial period of licensure is one year; and
 - b. The licensing period thereafter may be renewed for a two-year period if the facility successfully remains in compliance with all licensing rules and requirements.
3. The department may issue a license without inspecting a facility's buildings, grounds, and equipment if the department finds:
 - a. The facility was inspected and complied with the provisions of this chapter and North Dakota Century Code chapter 50-11 regarding buildings, grounds, and equipment in the preceding year; and
 - b. The facility is otherwise eligible to receive a license.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02

75-03-40-03. Application for license.

1. Applicants must be accredited and in good standing with one of the department-approved national accreditation bodies.
2. A person may not apply for a license to operate a facility under this chapter until the department has reviewed the need for the additional residential placement resources. To enable the department to make a determination of need for a new qualified residential treatment program facility, the potential applicant shall submit an initial request for application, including the following documentation and information to the department:
 - a. A detailed plan for the operation of the proposed qualified residential treatment program which includes:
 - (1) The number, sex, and age range of the residents to be served;
 - (2) The needs or disabilities of residents to be served;
 - (3) The employee staffing, including a list of full-time and part-time positions by job titles and description;

- (4) A description of the proposed program and treatment goals;
 - (5) A proposed budget; and
 - (6) The location of the facility and a drawing of the layout of the physical plant.
- b. A detailed written description of the methodology and findings that document the reasons why the unserved children under subsection 2 may not be served satisfactorily in a less restrictive setting.
 - c. Data to support that existing qualified residential treatment program placement resources are not adequate to meet the needs of children who require the type or types of care, are North Dakota residents, and require the treatment services the applicant proposes to provide.
3. Upon receipt of initial request for application, the department shall:
 - a. Review the potential applicant's information and may ask for additional materials or information necessary for evaluation of need purposes;
 - b. Respond in writing within ninety days of receipt of all required information from the potential applicant;
 - c. Send written notice of determination of need. The notice must state the specific reason for the determination. If the department determines there is need for additional qualified residential treatment program beds, the notice must be accompanied by an authorization for the person to apply for a license to operate a new qualified residential treatment program; and
 - d. Inform the potential applicant of what is required to move forward with the application process.
 4. An application for a facility license must be submitted to the department annually in the form and manner prescribed by the department.
 5. The applicant shall carry general comprehensive liability insurance.
 6. For purposes of time limits for approval or denial, an application is received by the department when all required information and documents have been received by the department. The department shall notify an applicant if an application is incomplete.
 7. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification.
 8. An applicant currently holding a residential child care facilities license is exempt from compliance with subsection 2.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02, 50-11-03

75-03-40-04. Correction orders.

1. The following time periods are allowed for correction of violations of North Dakota Century Code chapter 50-11 or this chapter:
 - a. For a violation that requires an inspection by a state fire marshal or local fire department, five days;

- b. For a violation that requires substantial remodeling, construction, or change to a building, sixty days; and
 - c. For all other violations, twenty days.
2. The department may require immediate correction of a violation that threatens the life or safety of a resident.
3. All time periods under this section commence on the third day after the department mails notice of the correction order to the facility.
4. Upon written request by the facility and upon showing need for an extension created by circumstances beyond the control of the facility and documentation that the facility has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.
5. The department may inform the public of a facility correction order status.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-04.2

75-03-40-05. Fiscal sanctions.

1. The department may assess a fiscal sanction of twenty-five dollars per day for each day the facility remains out of compliance with a correction order.
2. The issuance of a fiscal sanction does not preclude the department's pursuit of other actions, including provisional licensure, injunction, and license revocation.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-04.4, 50-11-04.5

75-03-40-06. Provisional license.

1. A provisional license must state:
 - a. The facility has failed to comply with applicable standards and regulations of the department;
 - b. The areas of noncompliance noted by the department in a written document; and
 - c. An expiration date not to exceed one year from the date of issuance.
2. The department shall exchange a provisional license for an unrestricted license, upon the facility's demonstration of compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license may be issued only to a facility who has acknowledged, in writing, the factual and legal basis for the violation. If not acknowledged by the facility, the department may revoke a license in accordance with this chapter or North Dakota Century Code chapter 50-11.
4. Any provisional license must be accompanied by a written statement of violation signed by a designee of the department.

5. A facility with a provisional license is not eligible for foster care maintenance payments. The facility shall be eligible to receive foster care maintenance payments for only the period after which the department determines the facility is in full compliance with the applicable licensing standards and regulations.
6. Subject to the exceptions contained in this section, a provisional license entitles the facility to all the rights and privileges afforded a facility operating under an unrestricted license.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02.2

75-03-40-07. Denial or revocation.

1. A facility license may be denied or revoked under the terms and conditions of North Dakota Century Code chapter 50-11 or if the applicant or facility has violated any provision of North Dakota Century Code chapter 50-11 or fails to meet the minimum requirements of this chapter.
2. If the department decides to revoke a license, the department shall notify the facility in writing of its decision and the reasons for revocation. Upon receipt of notification arrangements shall be made by the facility in cooperation with each resident's custodian and parent or guardian for alternative placement.
3. A facility whose application for licensure has been revoked or denied may appeal to the department under the provisions of North Dakota Century Code sections 50-11-08 and 50-11-09. During an appeal, the facility may not have residents.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-07, 50-11-08, 50-11-09

75-03-40-08. Residential bed capacity.

1. A facility may not receive a licensing amendment to increase or decrease facility bed capacity without approval of the department.
2. To qualify for an increase or decrease, a facility shall:
 - a. Submit a written request;
 - b. Provide a rationale for bed capacity change; and
 - c. Be in compliance with North Dakota Century Code chapter 50-11 and this chapter.
3. The department shall review the facility's request and may approve or deny the request within fifteen working days after considering the need for the beds and the number of beds available. If accepted, the facility will receive an amended license.
4. The department has the authority to conduct a needs assessment at any time to determine the maximum number of licensed qualified residential treatment program beds required to meet the treatment needs of North Dakota children statewide. The needs assessment will allow the department to license facility beds accordingly. The department shall notify facility providers with a sixty-day notice of intent to increase or decrease bed capacity.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-02, 50-11-03, 50-11-09

Law Implemented: NDCC 25-03.2-03.1, 50-11-02.3

75-03-40-09. Facility closure.

The facility shall have a policy to ensure proper and efficient procedure in the event a facility would close. Prior to closing, the facility administrator shall provide at least a sixty-day written notice to the department:

1. Detailing a plan for closure, including:
 - a. Date of closure;
 - b. Plan to notify each custodian and parent or guardian;
 - c. Identification of a North Dakota depository to maintain the facility's case, fiscal, employee, and nonemployee records; and
 - d. Retention of all fiscal records for a period of six years following account settlement.
2. Written notification must be given at least forty-five days prior to closure for each resident in placement to a custodian and parent or guardian. Notification also shall be given to all former residents currently receiving aftercare services.
3. A facility that does not follow the closure standards may be subject to fiscal sanctions.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-10. Governance.

1. Each facility shall have a governing body responsible for the operation, policies, activities, practice, and overall operations of the facility. The governing body shall:
 - a. Be composed of at least five members. A list of the names and contact information of members of the governing body must be maintained and submitted to the department annually. Each board member annually shall disclose conflicts of interest. Members of the board may not be family or have conflicts of interest with the facility administrator or employees with budget or accounting duties;
 - b. Meet at least every six months;
 - c. Maintain records of the governing body's meetings;
 - d. Develop and review policies for member selection and rotation;
 - e. Ensure each member understands the facility operation and program goals;
 - f. Ensure the facility is funded, housed, staffed, and equipped in a manner required for the provision of services;
 - g. Provide the most recent fiscal year-end financial records to the department for payment purposes, upon request;
 - h. Ensure the facility has an active strategic plan with a schedule to review annually;
 - i. Employ a qualified facility administrator and delegate responsibility to that facility administrator for the administration of the facility;
 - j. Evaluate the performance of the facility administrator at least annually;

- k. Adopt a written statement of the purpose and philosophy of the facility; and
 - l. Adopt written policies for the facility regarding administration, personnel, buildings, grounds, and program services. Personnel policies for the recruitment and retention of employees necessary to operate the facility must indicate expectations of employees and nonemployees, detail job descriptions for each position, and ensure a process to review policies and procedures with employee participation at least every three years.
2. All statements and policies required by this chapter must be in writing to demonstrate the intent of the standards are integrated into facility practice. The facility policy must be up to date.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-11. Disaster plan.

A facility shall have a written disaster plan to accommodate emergencies. The disaster plan must allow the department or custodial agency to identify, locate, and ensure continuity of services to residents who are displaced or adversely affected by a disaster. The disaster plan must address how to accommodate accessibility needs for all residents and staff. The facility shall ensure the disaster plan specifies:

1. Where employees, nonemployees, and residents would go in an evacuation, including one location in the nearby area and one location out of the area;
2. Contact information inclusive of phone numbers and electronic mail addresses for facility administration;
3. A list of items the facility will take if evacuated, including any demographic and emergency contact information for each resident and medication and medical equipment to meet the needs of residents;
4. The process the facility will use to inform the department and each resident's custodian and parent or guardian if the resident is displaced or adversely affected by a disaster;
5. Employee training on the disaster plan must detail procedures for meeting disaster emergencies. The review of the disaster plan must occur with employees on an annual basis to ensure it is current, accurate, and employees understand their role. The facility shall document the annual review and provide the documentation to the department upon request;
6. Resident training on the disaster plan ensuring awareness of all emergency and evacuation procedures upon admission to the facility. These procedures must be reviewed upon intake into the facility and every quarter. Resident training must include the performance and documentation of fire evacuation drills;
7. The facility has telephones centrally located and readily available for use in each living unit of the facility. Emergency numbers must be written and posted by each telephone;
8. There must be at least two independent exits from every floor. The exits must be located so that residents can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area; and
9. Flashlights must be available for emergency purposes.

History: Effective October 1, 2019.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-11

75-03-40-12. Quality assessment and performance improvement.

A facility shall have a performance and quality improvement plan that advances efficient, effective service delivery, effective management practices, and the achievement of strategic and treatment program goals and outcomes.

1. A facility shall have a written performance and quality improvement plan that operationalizes the organization's performance and quality improvement system and:
 - a. Defines the organization's approach to quality improvement;
 - b. Defines employee roles and responsibility for implementing and coordinating the performance and quality improvement plan;
 - c. Identifies what is being measured;
 - d. Defines data collection processes and applicable time frames;
 - e. Outlines processes for reporting findings and monitoring results; and
 - f. Provides a document or chart that describes the organization's performance and quality improvement plan, including committees and members, as appropriate.
2. A facility performance and quality improvement plan must include guidelines for performance and outcomes which identify measures to build organizational capacity, improve services, and meet licensing, contracting, and reporting requirements, by evaluating the:
 - a. Impact of services on resident outcomes;
 - b. Quality of service delivery; and
 - c. Management and operations performance.
3. A facility shall use a department-approved standardized tool to measure resident outcomes approved by the department and in compliance with national accreditation standards.
4. A facility shall conduct the department-approved postresidential outcomes survey at the conclusion of the six-month required followup aftercare period.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-13. Personnel files.

1. The facility shall maintain an individual file on each employee. The file must include:
 - a. File inventory detailing first and last date of employment, reason employment ended, training totals per year, and performance evaluation dates due;
 - b. The application for employment including a record of previous employment;
 - c. A job description specifying the employee's roles and responsibilities;
 - d. A statement signed by the employee acknowledging the confidentiality policy;

- e. Documentation of information obtained from an employee's references if previously employed at another residential facility;
 - f. Annual performance evaluations;
 - g. Professional development and training records consisting of the name of presenter, date of presentation, topic of presentation, and length of presentation. The following training must be completed and required training certificates placed in the employee file:
 - (1) First-aid training;
 - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
 - (3) Nonviolent crisis intervention;
 - h. Evidence of the employee having read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially upon hire and annually thereafter;
 - i. Results of fingerprint-based criminal background checks, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - j. Any other evaluation or background check deemed necessary by the facility administrator of the facility; and
 - k. Verification of any required license or qualification for the position or tasks assigned to the employee.
2. The facility shall maintain an individual file on each nonemployee. The file must include:
- a. Personal identification information;
 - b. Results of fingerprint-based criminal background checks, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - c. Description of duties;
 - d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; and
 - e. Evidence of the nonemployee having read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially upon hire and annually thereafter.
3. The facility shall adopt a policy regarding the retention of employee and nonemployee files.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-14. Facility administrator.

The governing body of the facility shall designate a facility administrator for the facility.

- 1. The governing body of the facility shall clearly define, in writing, the responsibilities of the facility administrator. If the facility is licensed for ten or more residents, the facility shall employ a full-time onsite facility administrator. A facility may not employ a facility administrator less than half-time.

2. The facility administrator must have a bachelor's degree in business or public administration, social work, behavioral science, or a human services field and have four years of related work experience in administration or must be an individual otherwise qualified and employed as a residential child care facility administrator prior to October 1, 2019.
3. The facility administrator shall assure adequate supervision is provided to all employees and nonemployees working or placed in the facility.
4. The facility administrator shall designate and provide evidence of the designation in the employee's file, at least one employee authorized to apply the reasonable and prudent parent standard. The designated employee shall receive training on how to use and apply the reasonable and prudent parent standard.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-15. Clinical director.

1. The facility shall clearly define, in writing, the responsibilities of the clinical director. The duties of the clinical director must be devoted to the provision of clinical services.
2. The clinical director must have a master's degree in a behavioral science field and must be licensed as required by the field of practice, with three years of work experience in a clinical setting, have experience working with children in need of treatment, and provide evidence of supervisory knowledge and skills, or must be an individual otherwise qualified and employed as a residential child care facility program director prior to October 1, 2019.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-16. Treatment coordinator.

1. The facility clearly shall define, in writing, the responsibilities of the treatment coordinator employees. The duties of a treatment coordinator employee must be devoted to the coordination of treatment services and overall case management of treatment planning for residents. A treatment coordinator employee must have achieved the competencies necessary to implement an individualized care plan for each resident.
2. The treatment coordinator employee must have a bachelor's degree in a behavioral science field and must be licensed as required by the field of practice, and two years previous paid or unpaid work experience with children or families or be an individual otherwise qualified and employed as a residential child care facility social service employee prior to October 1, 2019.
3. A facility shall have sufficient treatment coordinator employees employed to meet minimum employee-to-resident ratios required by this chapter.
4. A treatment coordinator employee is responsible for the supervision of other employees or nonemployees and must be allowed reasonable time to perform supervision tasks.
5. The professional development and training records must document the treatment coordinator employee has had appropriate training to coordinate treatment services and trauma informed care.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-17. Direct care employees.

1. The facility clearly shall define, in writing, the duties and responsibilities of the direct care employees.
2. All direct care employees must:
 - a. Be at least twenty-one years of age;
 - b. Have a high school diploma or equivalent;
 - c. Have at least one year of experience working with children or families. If a prospective direct care employee does not have one year of experience working with children or families, the facility may choose to hire, but then shall provide shadowing and supervision to the direct care employee for up to one year or until the direct care employee has successfully completed all required training noted in section 75-03-40-29; or
 - d. An individual otherwise qualified and employed as a residential child care facility direct care employee prior to October 1, 2019.
3. A direct care employee shall complete mental health technician certification.
4. A direct care employee supervising other direct care employees must have a bachelor's degree in a behavioral science field or two years previous work experience with children or families.
5. A facility always shall have direct care employees working to meet the minimum employee-to-resident ratios required by this chapter.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-18. Nurse.

1. The facility clearly shall define, in writing, the duties and responsibilities of the nurse which must be within the scope of North Dakota Century Code chapter 43-12.1.
2. A facility shall provide for an onsite nurse to accommodate the medical needs of residents.
3. The nursing employee may be an employee of the facility or a contracted provider available to provide onsite nursing services to residents.
4. The facility shall provide the nurse with a private office located on the property where the residents reside to allow for engagement during the day to meet residents' medical needs.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-19. Family engagement specialist.

1. The facility clearly shall define, in writing, the responsibilities of family engagement specialists. The duties of the family engagement specialist must be devoted to the provision of family engagement and aftercare service supports to best meet the needs of the resident and the

resident's family. The family engagement specialist shall maintain ongoing contact with the resident's family as a liaison to the resident's treatment in the facility. Tasks may include:

- a. Communicating with the resident's family throughout the week to update the family on the resident's day, treatment progress, and challenges;
 - b. Offering support to the treatment coordinator employee and the resident's treatment plan; and
 - c. Providing or coordinating aftercare services and supports.
2. A family engagement specialist must have achieved the competencies necessary to implement family engagement strategies while the resident is in placement and coordinate an aftercare plan for no less than six months postdischarge.
 3. The family engagement specialists must have a bachelor's degree in a behavioral science field and must be licensed as required by the field of practice, and two years previous paid or unpaid work experience with children or families or be an individual otherwise qualified and employed as a residential child care facility social service employee prior to October 1, 2019. A higher degree may substitute for years of experience or the prospective family engagement specialist shall achieve the certification in either peer or family support and have the competencies to engage with families.
 4. A facility shall have sufficient family engagement specialists to meet the needs of the residents and family during placement and for no less than six months postdischarge.
 5. The professional development and training records must document the family engagement specialist has had appropriate training to coordinate treatment services, including family engagement and trauma informed treatment.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-20. Contracted service providers.

A facility may contract for or otherwise arrange professional services not provided by the facility when necessary for implementation of a resident's treatment plan. If a facility does contract for professional service providers to offer treatment onsite, the facility shall:

1. Maintain a list of all contracted service providers offering services onsite;
2. Require each contracted service provider to have the appropriate North Dakota license or certification; and
3. Require each contracted service provider to submit written reports to the facility on the resident's treatment progress.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-21. Nonemployees.

1. A facility that uses nonemployees shall:
 - a. Develop and provide a copy of a description of duties and specified responsibilities;

- b. Designate an employee to supervise and evaluate nonemployees; and
 - c. Develop a plan for the orientation and training of nonemployees to include the philosophy of the facility and the needs of the residents and the residents' families.
2. Nonemployees may provide services in support of, but not in substitution for, employees. Nonemployees may not be counted as an employee for purposes of employee-to-resident ratio requirements imposed by this chapter.
 3. Nonemployees shall create records of incidents that occur during their presence at the facility to the same extent employees are required to create such records.
 4. Nonemployees shall comply with section 75-03-40-23.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-22. Personnel policies.

The facility shall identify to the department all employee and nonemployee positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All employees and nonemployees must be capable of performing assigned duties. The facility shall have clearly written personnel policies for employees and when applicable, nonemployees. The facility shall make the policies available to each employee and nonemployee. The policies must include:

1. An annual professional training and development plan for all positions;
2. Procedures for reporting suspected child abuse and neglect;
3. Procedures detailing employee supervision and the number of employees one supervisor can supervise. The facility shall require and document annual training for supervisors to maintain and improve competence in the supervisory role and in facility treatment practices;
4. Procedures for employee annual written evaluation;
5. Procedures for employee and nonemployee disciplinary actions and terminations;
6. Procedures for storing personal belongings which may include car keys, cell phones, and employee or nonemployee medication while on duty;
7. Procedures for personnel grievances;
8. Each facility shall implement policy and procedure to address:
 - a. Zero tolerance policies, which must include zero tolerance for sexual abuse and sexual harassment by employees and nonemployees to others in the facility;
 - b. Nondiscrimination against an employee or nonemployee; and
 - c. Steps taken when an employee or nonemployee violates policy, procedures, or licensing standards that affects the mental or physical well-being of a resident; and
9. A plan for review of the personnel policies and practices with employee participation at least once every three years, or more often as necessary. The facility shall document policy reviews, revisions, and employee participants in writing.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-23. Confidentiality.

1. For purposes of this section, "persons who have a definite interest in the well-being of the residents" include:
 - a. The resident's custodian, parent, or guardian, except to the extent the parental rights have been terminated or limited by court order;
 - b. The referring agency that placed a resident in the facility; and
 - c. An individual or entity identified as a provider of services, as determined by the department, located in the home community of the resident's family, for the purposes of reunification.
2. Except as otherwise provided in this section, facility records concerning residents who have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
 - a. To employees and nonemployees of the facility, to the extent reasonably necessary for the performance of their duties;
 - b. To persons authorized by a custodian, parent, or guardian who may lawfully review a resident's records, to review or receive copies of that resident's records;
 - c. In a judicial proceeding;
 - d. To officers of the law or other legally constituted boards and agencies; or
 - e. To persons who have a definite interest in the well-being of the residents concerned, who are in a position to serve their interests, and who need to know the contents of the records to assure their well-being and interests.
3. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any current resident or former resident receiving aftercare services or the family of the resident, without first securing the written consent of the custodian and parent or guardian of the resident, or the written consent of an adult who was a former resident of the facility. The facility shall:
 - a. Ensure the written consent is informative, including full disclosure of how the image or information will be used, including any future use, and specifically must identify the image or information that may be disclosed by reference to dates, locations, and other event-specific information;
 - b. Inform the person signing that the individual is free to either grant or refuse to grant consent;
 - c. Provide a seven-day waiting period during which the consent may be withdrawn by the signing party; and
 - d. Ensure the consent is time-limited. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.
4. A facility shall disclose its records to the department as requested.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-06-15, 50-11-02, 50-11-05

75-03-40-24. Child abuse and neglect.

1. Upon hire and annually thereafter, all employees and nonemployees shall certify having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
2. Each facility shall adopt written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement: "All employees and nonemployees will comply with North Dakota Century Code Chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that if any employee or nonemployee who knows or reasonably suspects that a current resident or former resident receiving aftercare services whose health or welfare has been, or appears to have been, harmed as a result of abuse or neglect, that employee or nonemployee immediately shall report this information to the department. Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment or placement of nonemployee and referral of the employee or nonemployee to the office of the state's attorney for investigation of possible criminal violation."
3. The facility's policies and procedures must describe:
 - a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;
 - d. The responsibility of each individual in the reporting chain;
 - e. The status and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect; and
 - f. The status of the employee or nonemployee while the report is being assessed; if they are the subject of the report.
4. The facility shall cooperate fully with the department throughout the course of any assessment of any allegation of child abuse or neglect made concerning care furnished to a resident. The facility, at a minimum, shall provide the assessors with all documents and records available to the facility and reasonably relevant to the assessment and permit confidential interviews with employees, nonemployees, and residents. Internal facility interviews and investigations are not permitted to occur concurrent with a department assessment or law enforcement investigation.
5. In the case of an indicated determination, the facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken, or plans to take, to comply with any resulting recommendations from the state child protection team. The facility shall make assurances that revised facility practice will reduce the risk of the incident reoccurring. The facility shall respond within thirty days of receiving written notification of the determination.
6. A facility shall establish written policies specific to how the facility will proceed when a current or former employee or nonemployee is known to be:

- a. Involved in any capacity in a reported incident of institutional child abuse or neglect;
- b. Involved in any capacity in a reported incident of suspected child abuse or neglect; or
- c. The subject in a child abuse or neglect report that occurred outside of the facility, where the subject has been confirmed to have abused or neglected a child.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-25.1-03

75-03-40-25. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility administrator may not be, and a facility may not employ or place, in any capacity that involves or permits contact between an employee or nonemployee and any resident cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-20-12.3, sexual extortion; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines the individual has not been sufficiently rehabilitated.
 - (1) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of care to children.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without

subsequent charge or conviction. The department may not be compelled to make such determination.

4. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community verified by source documents;
 - b. Acknowledged by the individual; or
 - c. Discovered by the facility, authorized agent, or department as a result of a background check.
6. A facility shall establish written policies and engage in practices that conform to those policies to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.
7. A facility shall establish written policies specific to how the facility shall proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-40-26. Background checks.

1. The facility shall require a fingerprint-based criminal background check and child abuse and neglect index check be completed for each employee and nonemployee.
2. The facility shall make an offer of employment to an employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background check, a facility may choose to provide training and orientation to an employee or nonemployee. However, until the approved background check results are placed in the employee or nonemployee file, the employee or nonemployee only may have supervised interaction with residents.
3. The facility shall submit proper paperwork for the department to perform an annual child abuse and neglect index check on every employee and nonemployee. The facility shall place a copy of the results in each employee or nonemployee file.
4. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.
5. The facility previously licensed as a residential child care facility until September 30, 2019, may use the current employee's or nonemployee's fingerprint-based criminal background check results in the personnel file previously completed by the residential child care facility to comply with this section.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-40-27. Personnel health requirements.

1. All employees and nonemployees must be capable of performing assigned tasks.
2. All employees shall undergo an initial health screening, performed by or under the supervision of a physician not more than one year prior to or thirty days after employment to verify good physical health to work in the facility. The professional performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to others in the facility.
3. All employees and nonemployees shall undergo an initial test or screening for tuberculosis, within thirty days after employment or placement, and test results placed in employee and nonemployee files within thirty days of employment.
4. Unless effective measures are taken to prevent transmission, each facility shall develop a policy addressing that an employee or nonemployee suffering from a serious communicable disease must be isolated from other employees, nonemployees, and residents who have not been infected.
5. The facility shall develop a policy regarding health requirements for employees and nonemployees, including how often health screenings and tuberculosis testing will be required by the facility following the initial screening requirements.
6. The facility shall develop a policy requiring all employees and nonemployees to have the ability to carry out their assigned functions and duties. Employees or nonemployees whose condition gives reasonable concern for safety of residents may not be in contact with residents in placement.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-28. Minimum employee requirements.

1. For purposes of this section:
 - a. "Reside" means to sleep and keep personal belongings; and
 - b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.
2. Each facility shall adopt a policy specific to employee coverage for facility operations, including holidays, weekends, on-call clinical team rotations, daytime and overnight hours. Policy must address:
 - a. Designated employees required for the facility on-call clinical team;
 - b. Number of qualified employees onsite to sufficiently meet the needs of residents and respond to emergency situations;
 - c. Evaluation of the number of employees necessary to meet the age, developmental level, length of treatment, and the service needs of the resident population;

- d. Ability to schedule same gender or cross gender supervision if indicated by resident treatment needs; and
 - e. Employees hired specific to the onsite educational program may not be counted as direct care employees, treatment coordinator employee, family engagement specialist, facility administrator, or a clinical director during any time educational services are provided.
3. Each facility that operates more than one structure in which residents reside shall count the total number of residents admitted to the facility, residing in all structures collectively for purposes of determining the required number of clinical and treatment employees to meet employee-to-resident ratios.
 4. Each facility shall comply with the following minimum employee-to-resident ratio requirements:
 - a. A rotating on-call clinical team must be available twenty-four hours a day, seven days a week to meet the needs of resident emergency and crisis situations. The on-call clinical team must include at a minimum one nurse and one clinical employee;
 - b. No less than one half-time facility administrator for a facility providing treatment for up to nine residents;
 - c. No less than one full-time facility administrator for a facility providing treatment for ten or more residents;
 - d. No less than one full-time clinical director;
 - e. No less than one full-time nurse;
 - f. No less than one full-time treatment coordinator employee for each ten residents; and
 - g. No less than one full-time family engagement specialist for each twenty residents or aftercare clients.
 5. During awake hours each facility shall meet the standards of the facility's accrediting body or the ratios set forth in this subsection, if the ratios set forth in this subsection are greater than the employee-to-resident ratios set by the accrediting body.
 - a. Two employees who are qualified to provide direct care for one to twelve residents; and
 - b. One additional employee who is qualified to provide direct care for every one through six additional children thereafter.
 6. During overnight hours each facility shall have:
 - a. Awake employees at all times;
 - b. Employee-to-resident ratio at a rate not less than:
 - (1) Two employees who are qualified to provide direct care for one to twenty residents; and
 - (2) One additional employee who is qualified to provide direct care for every one through ten additional children thereafter; and
 - c. A policy that includes a requirement that an employee will check on residents during overnight hours at a minimum of every fifteen minutes, and more frequently if the acuity of the resident demands greater supervision. The overnight checks must be:
 - (1) Documented and available for review; and

- (2) Conducted in the least invasive manner to not disrupt the residents.
- 7. The facility shall notify the department, in writing, if the minimum employee-to-resident ratios are not met based on position vacancies. An interim plan to cover the employee duties must be approved by the department.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-29. Employee professional development.

- 1. All employees in contact with residents shall receive at least twenty hours of training per year, with evidence of completion in the employee file.
- 2. Required trainings to prepare employees to meet the needs of residents served by the facility include:
 - a. Certified first aid;
 - b. Certified cardiopulmonary resuscitation and automated external defibrillator training;
 - c. Certified nonviolent crisis intervention training;
 - d. Institutional child abuse and neglect training;
 - e. Facility trauma informed care training;
 - f. Child abuse and neglect mandated reporter training;
 - g. Children's emotional and developmental needs; and
 - h. Suicide prevention training, including identification of signs and facility response measures.
- 3. A certified instructor shall provide training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. A formal certificate must be provided to each employee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee file. Until a new employee has completed these required trainings, the facility administrator shall ensure that another employee, current in the required trainings, is scheduled to work on the same shift as the new employee pending training.
- 4. Prior to a new employee working independently with residents, the facility shall provide orientation training to the employee covering all of the following areas, with evidence of completion present in the employee file:
 - a. Facility philosophy and program goals;
 - b. Administrative procedures, policy, and protocols;
 - c. Personnel policies;
 - d. Programs and services offered onsite to residents;
 - e. Residents' emotional and physical needs;
 - f. Facility daily routine, activities, transportation, treatment group schedules, and meals;

- g. Expected employee conduct toward residents;
- h. Expected resident conduct while residing onsite;
- i. Facility's behavior management, including de-escalation techniques;
- j. Overview of trauma and facility trauma informed treatment;
- k. Protocol for observing and reporting resident behavior;
- l. Resident rights and grievance procedures;
- m. Protocol for identifying and reporting of child abuse and neglect;
- n. Suicide prevention, including identifying signs and facility response;
- o. Disaster plan;
- p. Resident search procedures and policies;
- q. Confidentiality standards;
- r. Procedures for reporting a runaway;
- s. Fire safety and evacuation procedures;
- t. Protocol for emergency medical procedures;
- u. Protocol for facility security measures and access to visitors; and
- v. Discuss interest in becoming certified for medication distribution.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-30. Resident file.

1. Upon placement, a resident's case record is confidential and must be protected from unauthorized examination unless permitted or required by law or regulation. The facility shall adopt a policy regarding the retention of resident records.
2. The resident record must include on file:
 - a. A file inventory with dates of admission, discharge, aftercare, referral source, and emergency contact information;
 - b. The resident's full name, date of birth, and other identifying information;
 - c. A photo of the resident;
 - d. The name and contact information of a custodian and parent or guardian at the time of admission, as well as contact information of additional family members approved to engage in visitation and maintain family connections;
 - e. The date the resident was admitted and the referral source;
 - f. Signed care agreement or contract, including financial responsibility and expectations of all parties. The placement agreement must indicate a clear division of responsibility and authority between the facility and the custodian and parent or guardian;

- g. Signed written consents, as applicable;
 - h. A copy of the initial and all ongoing assessment reports completed by the department approved qualified individual or documentation indicating placement approval or denial if the resident is accepted for an emergency placement;
 - i. A copy of required interstate compact forms, as applicable;
 - j. If the resident is in public custody, a current court order establishing the placement authority of a public agency;
 - k. Treatment progress reports must be provided to the resident, custodian and parent or guardian monthly, or upon request. Any progress reports received at the facility from an outside agency or professional providing services to the resident must be summarized and embedded in the resident's treatment plan;
 - l. Ongoing documentation and case activity logs detailing progress;
 - m. Documentation of discharge planning;
 - n. Visitation records. The facility shall have a formal plan for visitation signed by the custodian and parent or guardian detailing opportunities for the resident to engage in onsite visitation and home visits with family;
 - o. Education records;
 - p. All incident reports involving the resident; and
 - q. Documentation the clinical director, facility administrator, or designated employee has reviewed the resident case record monthly.
3. Resident medical information, including:
- a. Consent for medical care. The facility has obtained written, signed informed consent that gives the facility, resident's physician, or health care consultant the following authority to:
 - (1) Provide or order routine medical services and procedures;
 - (2) Delegate and supervise administration of medications by authorized employees and for such employees to handle, provide the medication to the resident, and provide monitoring of resident self-administration;
 - (3) Obtain medical information, as needed, on the resident; and
 - (4) Provide or obtain an order for medical services and procedures when there is a life-threatening situation, emergency medical procedures, including surgery, when it is not possible to reach the person or authority authorized immediately to give signed written specific informed consent;
 - b. Documentation about any special nutritional or dietary needs identified;
 - c. Documentation of health history;
 - d. Documentation of any medical treatments received while residing in the facility, including:
 - (1) Dates and person administering medical treatment;
 - (2) Immunizations;

- (3) Laboratory tests;
 - (4) Routine and emergency health care examinations;
 - (5) Dental examinations and treatment; and
 - (6) Eye examinations and treatment;
 - e. Medication administration records; and
 - f. A copy of the treatment plan prepared by the facility.
4. The resident record must include aftercare supports for six months postdischarge. Information to include:
- a. Contact information for the custodian and parent or guardian and others determined necessary for aftercare;
 - b. Date of discharge and six-month aftercare date of completion;
 - c. Documentation from the family engagement specialist detailing the aftercare or family treatment plan progress;
 - d. Documentation of ongoing communication with the resident, custodian and parent or guardian, and local providers; and
 - e. Upon six-month completion of aftercare, the resident file must include:
 - (1) Summary of the six-month aftercare services provided; and
 - (2) A copy of the department-approved outcomes survey.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-05

75-03-40-31. Programs and services.

Facility shall utilize trauma informed treatment and shall adopt a plan for the model which must include a description of services offered to residents and their families. The facility shall clearly state which services are provided directly by the facility and which services must be provided in cooperation with community resources, such as public or private schools, nursing, psychological, psychiatric, clinical services, and other appropriate services.

- 1. The facility shall have the ability to provide resource information for referral sources; including:
 - a. Identification of the treatment services provided;
 - b. Characteristics, including specific diagnoses, of children appropriate for referral and admission to the facility;
 - c. Trauma informed care model used;
 - d. The process by which the facility intends to achieve its goals;
 - e. Treatment orientation of the facility;
 - f. Information required with the referral;

- g. Specialty programs offered by the facility;
 - h. Performance quality improvement data;
 - i. Education options available to residents;
 - j. Exclusions of residents the facility is unable to serve, if applicable; and
 - k. Other information as needed to assist with determining appropriate level of care for a resident to be placed in the facility.
2. Education. Any primary or secondary education program offered by a facility must be in compliance with standards established by the department of public instruction. The facility shall ensure all residents who receive care in the facility comply with all state school attendance laws.
 3. Religious opportunities. The facility shall make a reasonable effort to make opportunities available for residents to attend religious ceremonies within the area in which the facility is located, giving appropriate consideration to any requests by the resident and the resident's family. The facility shall respect the religious beliefs of the resident and the resident's family.
 4. Normalcy activities. The facility shall document the resident's normalcy activities and share the information with the resident's custodian and parent or guardian. Each facility shall create a written policy detailing:
 - a. The employee job description related to carrying out the duties of the reasonable and prudent parent standard;
 - b. The variety of normalcy activities offered on and offsite to residents; and
 - c. Procedures identifying supervision, transportation, and offsite activity emergency responses.
 5. The facility shall develop policy specific to grievance procedures to allow residents and their families, referral sources, and stakeholders to submit complaints and grievances to the facility regarding programs and services. The facility shall have a policy in place to review and respond to the complaints and grievances. The facility shall maintain an annual record of complaints, grievances, and resolutions.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-32. Respite.

A facility may operate an optional respite care program with approval of the department. Respite care is defined as temporary relief care for a resident with special medical, emotional, or behavioral needs, which requires time-limited supervision and care by a licensed foster care provider. A respite care episode is a specified period of time during which respite care is provided by a licensed provider.

1. Eligibility. Residents eligible for respite care offered by an approved facility include a foster child in public custody and a former qualified residential treatment program resident engaged in the six-month aftercare.
2. Admission and discharge. A facility operating a respite care program shall have the written policies and procedures for admissions and discharge for respite care, including eligibility into the respite program, admissions criteria, required belongings, medications needed upon

admission, required identification documentation, authorizations needed, written consents for emergency medical care, medications, and discharge planning.

3. Staffing. A facility shall assign an employee to have primary responsibility for the facility's respite care program. Employee-to-resident ratios at a minimum, must meet the ratio as described in this chapter for direct care.
4. Program and services. A facility respite program must be developed which allows for a short-term refocus of service delivery and supports for a community placement. Respite care placements are exempt from the medical examination requirements due to the short period of stay.
5. Respite care plan. A facility shall develop an abbreviated plan for each resident admitted to the facility for respite care. The abbreviated plan must provide for services to meet social, emotional, medical, and dietary needs. The respite plan must address daily routine, engagement in recreational activities, ongoing education, and discharge planning. The respite plan may include a list of facility-based and community-based services and supports the resident and family is currently receiving or will receive upon discharge.
6. Length of stay. A respite care placement may not extend beyond seven days per episode.
7. Discharge. When a resident is discharged from respite care, the facility shall document in the resident's respite file the dates of the resident's stay, a summary of the resident's stay, the name of the person to whom the resident was discharged, and a list of all personal belongings and medications that went with the resident upon discharge. A final plan must be provided to the custodian and parent or guardian upon discharge.
8. Respite resident file. A facility with a respite care program shall include:
 - a. The resident's full name, date of birth, and other identifying information;
 - b. The contact information of the custodian and parent or guardian at the time of admission;
 - c. The date the resident was admitted and discharged;
 - d. Signed respite care agreement;
 - e. Signed written consents, including consent to nonemergency use of psychotropic medication and consent for use of secured unit, if applicable;
 - f. If the resident is in public custody, a current court order establishing the facility's authority to accept and care for any resident under the custody of a public agency;
 - g. Copy of the abbreviated plan prepared by the facility; and
 - h. Medication administration records, if applicable.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-33. Admissions and assessment.

1. Admissions policies and procedures. A facility shall have written resident admission policies and procedures that describe the primary treatment offered onsite, range of presenting behaviors the facility shall treat, and procedures for admitting a resident.

2. Admissions and discharge committee. A facility shall have an admissions and discharge committee with written policy specific to employees on the committee and the timeliness the committee has in responding to referrals. The committee shall meet on at least a weekly basis.
3. Admission determination. The admissions committee shall complete a written, dated, and signed admission determination on a prospective resident which includes a preadmission review and identification of the prospective resident's primary presenting needs. The facility shall provide the admission determination to the referral within seven days of receipt of the completed application. Referral may be completed by:
 - a. A public agency, if a prospective resident is in foster care and a public agency is granted custody and given full placement authority pursuant to law or court order; or
 - b. A parent or guardian, if a prospective resident is preapproved by the department as a private placement.
4. Admission conditions. A facility may admit a prospective resident, as determined by the admission determination and the following conditions are met:
 - a. Qualified individual - Level of care assessment.
 - (1) Completed assessment. The facility has received documentation from the department-approved qualified individual granting approval for the resident to be admitted to a qualified residential treatment program based on the North Dakota level of care assessment; or
 - (2) Emergency placement. A resident may be admitted to the facility for an emergency placement for a thirty-day level of care assessment period. Emergency placements denied for continued placement may not exceed thirty days from admission. For residents placed in the facility during the thirty-day level of care assessment period, the facility shall allow access to the qualified individual and collaborate in the completion of the required level of care assessment;
 - b. Juvenile court approval. For foster children, custodial case managers must receive confirmation from the juvenile court approving the qualified residential treatment program placement within sixty days of the resident's date of entry into the facility. A facility is not required to have a copy of the confirmation on file;
 - c. Interstate placements. In accepting a prospective resident from outside the state of North Dakota, the facility shall receive prior written approval under the interstate compact on the placement of children and meet all requirements of section 75-03-40-34;
 - d. Nondiscrimination against a resident; and
 - e. All documentation required for the resident record, including medical consent, medical history, family contact information, family history, placement care agreement, and financial responsibility.
5. Orientation. Upon admissions, each resident shall receive orientation to facility living. An employee shall:
 - a. Orient the new resident and the custodian and parent or guardian to the facility program;
 - b. Help the new resident to adjust to the effects of separation from family and to the residential placement; and

- c. Provide the new resident and the custodian and parent or guardian copies of the facility rules, including rules on visiting, expected behavior and consequences for rule infractions, resident rights, and grievance and complaint procedures, with explanations of the documents.
6. Initial screenings. A facility shall complete for each resident a:
 - a. Suicide risk screening;
 - b. Mental health screening; and
 - c. Health screening completed by the facility nurse. The health screening may include documenting height, weight, and identification of any distinct markings, such as a resident's birthmark, tattoos, bruises, or cuts.
7. Discharge date. Each admission must have preliminary plans for discharge.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-34. Interstate compact on the placement of children.

1. All placements of children made from out of state must follow the interstate compact on the placement of children or the interstate compact for juveniles and be in full compliance with the appropriate interstate compact. It is the responsibility of the facility to ensure, prior to the placement in the facility, all necessary procedures pursuant to the interstate compact on the placement of children or the interstate compact for juveniles have been completed.
2. Before admitting an out-of-state resident, a facility shall make arrangement with the referral to assure a lawful return of the resident to the sending state without regard to the circumstance under which the resident is discharged.
3. Out-of-state referrals must adhere to all requirements of this chapter.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 12-66, 14-13

75-03-40-35. Treatment plan.

1. A treatment coordinator shall develop a written, individualized treatment plan for each resident. Upon admission, the facility shall conduct an initial assessment of the resident's treatment and service needs and develop a treatment plan. An initial abbreviated treatment plan should be developed immediately for each resident while the formal treatment plan is developed by utilizing the needs assessments and other collateral information within fourteen days. The resident's treatment plan must:
 - a. Indicate review of the level of care assessment completed by the qualified individual, as well as other supporting documentation to assist in the development of a written treatment plan;
 - b. Be based on a thorough assessment of the situation and circumstances of the resident and the resident's family strengths and needs;
 - c. Support timely achievement of permanency, including reunification, guardianship, or adoption, if in foster care;

- d. Specify details, including the resident's:
 - (1) Strengths and needs;
 - (2) Family's strengths and needs;
 - (3) Behavioral functioning;
 - (4) Psychological or emotional adjustment;
 - (5) Personal and social development;
 - (6) Medical needs;
 - (7) Medication management;
 - (8) Educational and vocational needs;
 - (9) Independent living and transition skills; and
 - (10) Recreational interests and normalcy activities;
 - e. Be time-limited, goal-oriented, and individualized to meet the specific needs of the resident as identified from the assessment, including:
 - (1) Implementation date;
 - (2) Goals and objectives that specify behaviors to be modified;
 - (3) Projected achievement dates, with measurable indicators or criteria for monitoring progress and assessing achievement of treatment goals; and
 - (4) The name of the employee or community provider responsible for providing treatment required to the resident and the resident's family;
 - f. Include and document the involvement from the resident, parent or guardian, public custodial agency, courts, schools, informal social network, residential treatment team members, peer support, or any other individuals important to the resident;
 - g. Document the conditions for discharge and estimated discharge date; and
 - h. Be reviewed at least every thirty days by the treatment coordinator employee or designated facility clinician. Changes and modifications must be made and documented in writing to ensure appropriateness of the treatment goals.
2. Family treatment. The facility shall plan for how family members are integrated into the treatment process, including postdischarge aftercare services, and how sibling connections are maintained throughout placement. The family section of the resident's treatment plan must include:
- a. Contact information and outreach services with family members, including siblings. The plan must detail how the resident may maintain contact for any known family and appropriate social supports of the resident;
 - b. Family-based support during placement;
 - c. Family-based support for at least six months postdischarge;

- d. Document and provide evidence of the resident's and family's involvement during ongoing planning efforts;
 - e. Document ongoing outreach to and engagement with family members during resident's treatment. The facility shall maintain contact with the resident's custodian and parent or guardian at least weekly. Type of contact may be detailed and includes face-to-face, phone calls, and written communication;
 - f. Date and signature of the resident, employee, custodian, parent or guardian, and others, as applicable; and
 - g. Evidence of facility providing the treatment plan to the resident's custodian and parent or guardian.
3. Visitation plan. The facility shall detail in the resident's treatment plan the agreed upon visitation schedule for the resident from the custodian and parent or guardian. The plan shall identify approved visitors and opportunities for the resident to engage in home visits.
 4. Resident acknowledgment. The written treatment plan must include an indication of who must provide treatment coordination, and the residents' signature or the signed statement of the treatment coordinator employee that the treatment plan was explained to the resident and the resident refused to sign the treatment plan.
 5. Electronic filing. If a facility engages in electronic data entry and case filing, the facility shall develop a policy to manage this process. The policy must include the electronic medical records process, procedures for internal network security, employee access, and management of facility data, backup systems, and how the facility shall engage in electronic file sharing with the resident's custodian and parent or guardian.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-36. Discharge plan.

Each resident must have their discharge plan developed upon admission and reviewed ongoing as part of the treatment plan.

1. Persons involved in discharge planning should include:
 - a. Resident;
 - b. Resident's parent or guardian;
 - c. Custodian, if applicable;
 - d. Psychiatrist, if applicable;
 - e. Therapist, if applicable;
 - f. Clinical director;
 - g. Treatment coordinator employee;
 - h. Facility nurse;
 - i. Facility educator or community teacher;
 - j. Direct care employee;

- k. Foster parents, if applicable;
 - l. Juvenile court, if applicable; and
 - m. Other individuals important to the resident and family.
2. The discharge plan must address the following:
- a. The date of admission;
 - b. The anticipated date of discharge;
 - c. Details of the events and circumstances leading to the decision to discharge;
 - d. The name and address of the individual or agency to whom the resident must be discharged and the rationale for planning a discharge to that individual or agency;
 - e. A summary of services provided during placement;
 - f. A summary of goal achievement;
 - g. A summary of the resident's continuing needs, including health care, educational or vocational training, psychiatric, medical, psychological, social, behavioral, developmental, and chemical dependency treatment needs;
 - h. Appointments scheduled, including individual therapy, psychiatric services, educational services, and other services or supports as needed;
 - i. Medication plan, including a seven-day supply of needed medication and a prescription for medication to last through the first outpatient visit with a prescribing provider;
 - j. A summary of community-based service needs for the resident and resident's family;
 - k. A summary of efforts made by the facility to prepare the resident and the resident's family for discharge; and
 - l. The facility's plan for the six months of aftercare services for the resident and the resident's family.
3. The discharge committee shall review and approve each anticipated discharge thirty days prior to the discharge and provide the completed discharge plan to the custodian at least seven days prior to the anticipated discharge. A discharge planning meeting involving the resident, custodian, parent or guardian, facility treatment team, additional family members, community service providers, and foster care provider, if applicable must take place at least seven days before discharge to review and sign the discharge plan to ensure the continuity of services consistent with the resident's treatment needs after discharge.
4. If a discharge is not anticipated at least thirty calendar days ahead of time, the discharge is considered unplanned and the facility shall:
- a. Hold a discharge planning meeting involving the resident, custodian, parent or guardian, facility treatment team, additional family members, and any other relevant parties. This meeting must allow relevant parties time to review the discharge plan and aftercare engagement strategies while discussing services needed to best meet the needs of the resident.
 - b. Create and provide in writing a finalized discharge and aftercare plan to the custodian and parent or guardian at least seven days prior to the resident's discharge.

- c. Provide the discharge plan and aftercare plan no greater than seven days postdischarge, if an immediate discharge occurred.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-37. Resident and family engagement.

The facility shall create a written policy detailing how the facility embeds foundational concepts of family-driven, resident-guided care into the overall treatment model. The facility's policy shall account for situations in which termination of parental rights has occurred and limitations are set forth in a court order or law. The facility shall document and provide evidence of the resident's and their family's involvement in ongoing treatment planning. Resident and family engagement strategies may include:

1. Ongoing outreach to families during resident's treatment;
2. Engagement of family and resident in treatment;
3. Recognition of resident and family members as co-experts in treatment efforts;
4. Permitting family member onsite visits at any time, encouraging or requiring frequent phone contact, and supporting frequent home visits;
5. Intervention efforts occurring in the home and community whenever possible;
6. Parent involvement, if appropriate, in facility professional development trainings;
7. Resident and family participation in case planning and discharge planning meetings;
8. Resident advocacy and leadership training and opportunities within the facility with access and connections made in the community;
9. Parent advocacy and leadership training opportunities within the facility with access and connections made in the community;
10. Teaching a foundation of negotiation and conflict resolution skills to residents and their families; and
11. Creating and connecting residential intervention with a resident's community through outpatient services and providing a range of supporting services to meet each resident and family where they reside, ranging from traditional office based out-patient to intensive in-home supports, planned and crisis respite care, or skills coaches working in community settings.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-38. Aftercare.

The facility shall have written policies and procedures regarding how the six-month aftercare requirements must be implemented to best meet the needs of residents and families. Aftercare policy applies to all residents accepted into the facility for treatment. If a resident is placed as an emergency placement and not approved for treatment, aftercare services are not required. The six-month followup period must begin the day following the resident's discharge from the facility. The facility shall implement the aftercare plan developed as part of the discharge planning process. The facility may directly provide aftercare services and supports or coordinate with local service providers. The facility shall conduct a department-approved postresidential outcomes survey at the conclusion of the

six-month required aftercare period. Postdischarge aftercare services must be provided by the facility as follows:

1. If a resident discharged from the facility remains in foster care, the facility shall collaborate with the custodial agency to implement the six-month postdischarge plan.
2. If a resident is discharged and no longer in foster care, the facility shall coordinate the ongoing six-month aftercare with the resident and resident's family. If the resident's family declines continued engagement with the facility, the facility is required to continue to attempt to maintain at least monthly contact with the family for a period of six months.
3. If a resident is successfully discharged, but does require readmission to a facility, the aftercare services will discontinue and a new aftercare period will begin postdischarge from the current facility placement.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-39. Runaway notification.

1. A facility shall have written policies and procedures for notification if a resident has left the facility without permission or fails to return to the facility after an approved leave. Facility policy and procedures must detail how the determination is made that a resident is missing and must identify the employee designated to promptly complete notifications.
2. Facility notifications include:
 - a. Law enforcement officials and custodian and parent or guardian immediately after the facility confirms the whereabouts of the resident are unknown; and
 - b. The department's interstate compact administrator within forty-eight hours of an out-of-state resident's absence.
3. When the resident is found, the facility shall report the resident's return immediately to the law enforcement officials and the resident's custodian and parent or guardian.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-01

Law Implemented: NDCC 50-11-02

75-03-40-40. Incident and sentinel event reporting.

The facility shall have written policy outlining the documentation of incidents and sentinel events that occur while the resident is in placement. Policy must include:

1. Description of an incident as an unplanned occurrence that resulted or could have resulted in injury to people or damage to property, specifically involving the general public, residents, or agency employees.
 - a. Incidents involving law enforcement, including in the case of a runaway, criminal activity, behavior resulting in harm to others, or restraint injury. An incident also may involve issues, such as outbreak of a serious communicable disease, harassment, violence, and discrimination.
 - b. Notification must be made to the custodian and parent or guardian immediately or no more than twelve hours.

2. Description of a sentinel event as an unexpected occurrence involving death or serious physical or psychological injury not related to the natural course of a resident's illness or underlying condition, including any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome.
 - a. Sentinel events include serious injury or trauma to a resident, attempted suicide by the resident, death of a resident, or inappropriate sexual contact.
 - b. Notification must be made to the custodian and parent or guardian, and the department immediately or no more than twelve hours.
3. Documentation of an incident or sentinel event must be completed and placed in the resident's record. The report must include:
 - a. Resident's name, age, and sex;
 - b. A description of the incident or event;
 - c. The date, time, and location of the incident or event;
 - d. The name of each employee or nonemployee involved;
 - e. Methods used to address the resident's behavior, including duration of each intervention;
 - f. Detailed description of the technique or approach engaged with the resident at the time of the incident or event;
 - g. Results achieved from methods used to address resident behavior; and
 - h. Injuries received by either the resident or an employee in using physically enforced separation or restraint, how the injuries occurred, and any medical care provided.
4. The facility shall maintain a log of written reports of incidents involving residents.
5. Direct care employees must be given time at the beginning of each shift to be informed of or review incident reports occurring since their last shift.
6. Employees, nonemployees, and residents must be given time to debrief the incident with clinical staff.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-41. Suicide prevention.

A facility shall develop a suicide prevention plan that addresses several key components, including:

1. Employee and nonemployee training;
2. Intake screening;
3. Ongoing risk assessments;
4. Levels of supervision for resident's;
5. Intervention options;
6. Use of suicide prevention kits with cut down tools;

7. Facility communication, notification, and referral procedures;
8. Reporting and documentation; and
9. Sentinel event debriefing procedures.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-42. Medical.

1. The facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care for residents, including first aid, dental, optical care, and administration of prescription and nonprescription medicine. If a resident is due for a medical examination, the facility shall arrange for a physical examination within seven days of admission and for a dental or optical examination, if needed, within ninety days of admission. The facility shall arrange and provide for necessary remedial and corrective measures for every resident as soon as possible after an examination indicates a need.
2. The facility shall have policies governing the use of psychotropic medications.
3. The facility shall have a plan to separate an ill resident from other residents only if necessary, because of the severity of the illness and it is contagious or infectious.
4. The facility shall have a policy to prevent transmission of infection from all blood or other body fluid exposures, and all employees and nonemployees shall be aware of and follow policy related to universal precautions.
5. The facility shall have a first aid kit on each level of the building housing residents, in buildings where resident activities take place, and in every vehicle used to transport residents. The first aid kit must be placed where it is inaccessible to residents, but accessible to employees and nonemployees. A first aid kit must be inventoried and resupplied after each use.
6. The facility shall have a suicide prevention kit on each level of the building housing residents; including a cut down tool. The kit must be placed where it is inaccessible to residents, but accessible and readily available to employees and nonemployees. A kit must be inventoried and resupplied after each use.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-43. Medication management.

1. For purposes of this section:
 - a. "General supervision" means regular coordination, direction, and inspection of the exercise of delegation of medication administration by a physician or nurse of an employee not licensed to administer medications.
 - b. "Medication administration" means proper administration of medication to a resident by an employee designated and trained for the administration of medications.
 - c. "Monitoring of resident self-administration" means distributing the medication to the resident by a designated and trained employee according to physician and medication label instructions and observing and ensuring the proper ingestion, injection, application, or inhalation of the medication by the resident.

2. The facility shall adopt comprehensive written policies and procedures for medication administration and monitoring of resident self-administration. Each employee responsible for administering medication or monitoring of resident self-administration shall receive a copy of the facility policies and procedures for medication administration and monitoring of resident self-administration and shall be knowledgeable of them. The policies and procedures must include:
 - a. Medications administration:
 - (1) Having written informed consent on file;
 - (2) Having information in each resident's health record about any health allergies or health-related restrictions;
 - (3) Having on file written authorization from a physician or nurse for each employee permitted to administer medications or to monitoring of resident self-administration;
 - (4) Instructions for employees concerning administration of medications and monitoring of resident self-administration of medications, secure storage of medications, and recording medication administration information in the resident's health record;
 - (5) Immediate notification to the facility nurse of all medication errors;
 - (6) Immediate notification of a physician in the event of a resident's adverse drug reaction; and
 - (7) Medications distributed onsite may only occur when an employee authorized by the facility is present;
 - b. For prescription medications, all of the following apply:
 - (1) Require the medication be administered by employees certified to distribute medication to a resident only when:
 - (a) The resident's attending physician or medical consultant provides employees with clear written instructions for administering the medication and authorizes the facility to administer the medication;
 - (b) The administration takes place under the general supervision of a physician or nurse. Employees certified to distribute medication are supervised by the facility nurse; and
 - (c) The label on the medication container gives clear instruction for administration of the medication and, if not clear, the facility shall contact the physician or pharmacy for clarification before administration of the medication; and
 - (2) Allowing a medication to be self-administered onsite by a resident only while the resident is under direct supervision of an employee and if self-administration is authorized in writing from the prescribing physician or facility medical consultant;
 - c. Information to employees, a resident, and the custodian and parent or guardian about any medication prescribed for the resident and when a physician orders any changes to the resident's medication. Information must include expected benefits and potential adverse side effects that may affect the resident's overall treatment. Employees also shall be informed on procedures of what to do if the resident refuses medication;

- d. Instructions for employees on what to look for in monitoring physical or mental changes to a resident that may occur from a medication, what to do if physical or mental changes are observed, and documentation needed in the resident's health record;
- e. Arrangement for a second medical consultation when a resident or the custodian and parent or guardian has concerns about any medication received by the resident or the resident's medication plan;
- f. The resident's physician or facility medical consultant review a resident's prescription when there are noted adverse effects from the medication. Documentation showing the date of review and reviewer's name must appear in the resident's health record;
- g. The use of any nonprescription medication is based on an assessment by a physician or nurse and is approved by either a physician or nurse;
- h. Arrangement for administration of prescribed medications to a resident when the resident is away from the facility. A resident may not be given access to medications if there is reason to believe the resident may harm themselves through abuse or overdose;
- i. Medications storage. A facility shall comply with all the following requirements for storage of medications:
 - (1) Medications must be kept in locked cabinets or containers and under proper conditions of sanitation, temperature, light, moisture, and ventilation to prevent deterioration;
 - (2) A facility immediately shall dispose properly of all outdated prescriptions, over-the-counter medication, and all prescription medication no longer in use; and
 - (3) The facility shall maintain a log of the medication properly disposed, which employee disposed of it, and what and how much was disposed;
- j. Medication administration record. A facility shall have in each resident's health record a written medications administration record which lists each prescribed and over-the-counter medication the resident receives. The record must contain the following information:
 - (1) For an over-the-counter medication, the resident's name, type of medicine, reason for use, times and day of administration, and employee authorizing its use; and
 - (2) For a prescription medication, all of the following apply:
 - (a) The name of the resident;
 - (b) The generic or commercial name of the medication;
 - (c) The date the medication was prescribed;
 - (d) The name and telephone number of the prescriber to call in case of a medical emergency;
 - (e) The reason the medication was prescribed;
 - (f) The dosage;
 - (g) The time or times of day for administering the medication;

- (h) Documentation of all medication administered with the date and time of administration or, if not administered, with the date and time of resident refusal to take it;
 - (i) The method of administration, such as orally or by injection;
 - (j) The name of the employee who administered or monitored resident self-administration of the medication;
 - (k) Any adverse effects observed; and
 - (l) Any medication administration errors and corrective or other action taken; and
- k. Psychotropic medications. In this subdivision, "psychotropic medication" means any drug that affects the mind and is used to manage behavior or psychiatric symptoms.
- (1) Nonemergency procedures. A facility serving a resident for whom psychotropic medications are prescribed shall ensure all of the following requirements are met:
 - (a) Arrangements have been made for a physician or medical consultant to complete a medical screening of the resident for the type of psychotropic medication to be prescribed;
 - (b) The resident, if fourteen years of age or older, and the custodian have signed written consent forms agreeing to the use of the psychotropic medication. The facility shall pursue consent from a parent or guardian with the final consent made by the custodian; and
 - (c) The facility has obtained from the prescribing physician or medical consultant a written report within the first forty-five days after the resident has first received a psychotropic medication and at least every sixty days thereafter. The report must state in detail all of the following:
 - [1] Reasons for the initial use of the medication;
 - [2] Reasons for continuing, discontinuing, or changing the medication;
 - [3] Any recommended change in treatment goals or program; and
 - [4] The method and procedures for administering or monitoring of resident self-administration of a psychotropic medication must have been approved by the prescribing physician or medical consultant.
 - (2) Emergency procedures. For emergency administration of a psychotropic medication to a resident, a facility shall:
 - (a) Have authorization from a physician;
 - (b) Notify the custodian and parent or guardian as soon as possible following emergency administration. The facility shall document the dates, times, and individuals notified in the resident's record; and
 - (c) Document the physician's reasons for ordering the emergency administration of psychotropic medication.
 - (3) Revocation of consent or refusal. A resident or custodian may at any time revoke consent for nonemergency use of psychotropic medications. The facility shall

consider the consent or refusal of the resident's parent or guardian. When a consent is revoked, the facility shall do all of the following:

- (a) Document the reasons for refusal;
- (b) Employee who personally witnessed the refusal shall sign a written statement indicating the event and place it in the file;
- (c) Notify the resident's physician or medical consultant; and
- (d) Notify the custodian and parent or guardian. Notification must be provided immediately if the resident's refusal threatens the resident's well-being and safety.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-44. Behavior management intervention.

1. A facility shall create a trauma informed culture that promotes respect, healing, and positive behaviors and which minimizes the use of restrictive behavior management interventions to the extent possible.
2. The facility shall provide the resident, custodian, and parents or guardians a list of facility expectations and behavior management intervention guidelines.
3. A facility shall adopt and implement written policies and procedures for behavior management consistent with the following:
 - a. Compliance with the standards of the facility's accrediting body.
 - b. Behavior management interventions must be constructive or educational in nature.
 - c. Only employees of the facility may prescribe, administer, or supervise the behavior management interventions of the resident.
 - d. A resident may not be subject to:
 - (1) Physical abuse;
 - (2) Excessive physical exercise or other activities causing physical discomfort;
 - (3) Unduly strenuous physical work;
 - (4) Verbal abuse, ridicule, or humiliation;
 - (5) Penalizing a group for an identified group member's misbehavior;
 - (6) Any aversive measure that is painful, discomforting, dangerous, or potentially injurious; or
 - (7) Denial of any of the following items:
 - (a) Shelter;
 - (b) Emotional support;
 - (c) Sleep;

- (d) A place to sleep with a pillow and bedding;
 - (e) Meals or menu items;
 - (f) Clean clothes;
 - (g) Personal or telephone visits with the resident's custodian, parent or guardian, or advocate;
 - (h) Time necessary for personal hygiene;
 - (i) Minimum exercise;
 - (j) Mail;
 - (k) Access to toilet and water facilities, as needed;
 - (l) Attendance at a religious service or religious counseling;
 - (m) Clean and sanitary living conditions;
 - (n) Medication;
 - (o) Program services or treatment; or
 - (p) Entry to the facility.
4. For the purposes of this section, "time-out" means a behavior management intervention technique that is part of an approved program that involves the voluntary option of a resident to move to an unlocked designated area for a period of time to regain self-control.
5. Application of time-out by a facility must be as follows:
- a. A resident in time-out must never be physically prevented from leaving the time-out area.
 - b. Time-out may take place away from the area of activity or from other residents, such as in the resident's room, or in the area of activity or other residents.
 - c. An employee continuously shall observe the resident while the resident is in time-out and provide calming assistance as prescribed in the resident's treatment plan.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-45. Emergency safety interventions.

The facility shall provide and administer emergency safety interventions as follows:

- 1. For purposes of this section:
 - a. "Drug used as a restraint" means any drug that:
 - (1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;
 - (2) Has the temporary effect of restricting the resident's freedom of movement; and
 - (3) Is not a standard treatment for the resident's medical or psychiatric condition.

- b. "Emergency safety intervention" means the use of restraint as an immediate response to an emergency safety situation involving unanticipated resident behavior that places the resident or others at threat of serious violence or serious injury if no intervention occurs.
 - c. "Emergency safety situation" means a situation where immediate risk of harm is present due to unanticipated resident behavior that places the resident or others at threat of serious violence or serious injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.
 - d. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident to calm or comfort him or her, or holding a resident's hand to safely escort a resident from one area to another, or a physical escort which means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.
 - e. "Tier 2 mental health professional" has the same meaning as the term defined in subsection 9 of North Dakota Century Code section 25-01-01.
2. Education and training related to emergency safety interventions:
- a. Individuals who are qualified by education, training, and experience shall provide employee education and training.
 - b. Employees must be trained and demonstrate competency before participating in an emergency safety intervention.
 - c. The facility shall document in the employee personnel records that the training and demonstration of competency were successfully completed.
 - d. All training programs and materials used by the facility must be available for review by the accreditation body and the state agency.
 - e. The facility shall require employees to have ongoing education, training, and demonstrated knowledge and competency of all of the following, no less than semiannually:
 - (1) Techniques to identify employee and resident behaviors, events, and environmental factors that may trigger emergency safety situations;
 - (2) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations;
 - (3) The safe use of restraint, including the ability to recognize and respond to signs of physical distress in residents who are restrained; and
 - (4) Training exercises in which employees successfully demonstrate in practice the techniques they have learned for managing emergency safety situations.
3. Emergency safety intervention:
- a. Facilities shall have a policy for the safe use of emergency safety interventions;
 - b. Restraint may be used only when a resident poses an immediate threat of serious violence or serious injury to self or others and must be discontinued when the immediate threat is gone. The use of seclusion by a facility is prohibited;

- c. Employees shall document all interventions attempted to de-escalate a resident before the use of a restraint;
 - d. When restraint is deemed appropriate, personal restraint is allowed. Mechanical restraints, prone restraints, and drugs used as a restraint are prohibited;
 - e. Employee training requirements must include procedures:
 - (1) For when restraint may and may not be used;
 - (2) That safeguard the rights and dignity of the resident;
 - (3) For obtaining informed consent, including the right of the custodian and parent or guardian of the resident to be notified of any use of restraint or any change in policy or procedure regarding use;
 - (4) Regarding documentation requirements of each restraint episode and the use of such data in quality improvement activities; and
 - (5) Regarding the debriefing of the resident and employees immediately after incidents of restraint; and
 - f. Quality management activities must examine the following:
 - (1) Available data on the use of these practices and their outcomes, including the frequency of the use of restraint, settings, authorized employees, and programs;
 - (2) The accuracy and consistency with which restraint data is collected, as well as the extent to which restraint data is being used to plan behavioral interventions and employee training;
 - (3) Whether policies and procedures for using these practices are being implemented with fidelity;
 - (4) Whether procedures continue to protect residents; and
 - (5) Whether existing policies for restraint remain properly aligned with applicable state and federal laws.
4. Restraint:
- a. Personal restraint is the only form of restraint allowed.
 - b. If an emergency safety situation occurs and a personal restraint is determined necessary, the following actions are prohibited:
 - (1) Any maneuver or techniques that do not give adequate attention and care to protection of the resident's head;
 - (2) Any maneuver that places pressure or weight on the resident's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression;
 - (3) Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the resident's head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway, such as straddling or sitting on the resident's torso;
 - (4) Any type of choke hold;

- (5) Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance; and
 - (6) Any technique that involves pushing on or into a resident's mouth, nose, or eyes, or covering the resident's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding.
5. Authorization for the use of restraint:
- a. Authorization for restraint must be given by a tier 2 mental health professional and the tier 2 mental health professional must be trained in the use of the facility emergency safety interventions.
 - b. The authorization must indicate the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with the clinical director.
 - c. If the authorization for restraint is verbal, the verbal authorization must be received by a clinical team member, while the emergency safety intervention is being initiated by an employee or immediately after the emergency safety situation ends. The tier 2 mental health professional must verify the verbal authorization in a signed written form in the resident's record and be available to the resident's treatment team for consultation, in person or through electronic means, throughout the period of the emergency safety intervention.
 - d. Each authorization for restraint:
 - (1) Must be limited to no longer than the duration of the emergency safety situation;
 - (2) May not exceed the amount of time necessary to begin verbal de-escalation techniques with the resident; and
 - (3) Must be signed by the tier 2 mental health professional no later than twelve hours from initiation of a verbal authorization.
 - e. Within one hour of the initiation of a restraint, a face-to-face assessment of the physical and psychological well-being of the resident must be completed, documenting:
 - (1) The resident's physical and psychological status;
 - (2) The resident's behavior;
 - (3) The appropriateness of the intervention measures; and
 - (4) Any complications resulting from the intervention.
 - f. Each authorization for restraint must include:
 - (1) The name of the tier 2 mental health professional;
 - (2) The date and time the authorization was obtained; and
 - (3) The emergency safety intervention authorized, including the length of time authorized.
 - g. An employee shall document the intervention in the resident's record. That documentation must be completed by the end of the shift in which the intervention

occurs. If the intervention does not end during the shift in which it began, documentation must be completed during the shift in which it ends. Documentation must include all of the following:

- (1) Each authorization for restraint as required in subdivision f;
 - (2) The time the emergency safety intervention began and ended;
 - (3) The time and results of the one-hour assessment required in subdivision e;
 - (4) The detailed emergency safety situation that required the restraint; and
 - (5) The name of each employee involved in the restraint intervention.
- h. The facility must maintain a record of each emergency safety situation, the interventions used, and their outcomes.
- i. If a tier 2 mental health professional authorizes the use of restraint, that person shall:
- (1) Consult with the resident's prescribing physician as soon as possible and inform the resident's physician of the emergency safety situation that required the restraint; and
 - (2) Document in the resident's record the date and time the resident's prescribing physician was consulted.
6. Monitoring of the resident in and immediately after restraint:
- a. An on-call clinical team member trained in the use of emergency safety interventions shall be physically present, continually assessing and monitoring the physical and psychological well-being of the resident and the safe use of restraint throughout the duration of the emergency safety intervention.
 - b. If the emergency safety situation continues beyond the time limit of the authorization for the use of restraint, a nurse or other on-call clinical team member, immediately shall contact the tier 2 mental health professional, to receive further instructions.
 - c. Upon completion of the emergency safety intervention, the resident's well-being must be evaluated immediately after the restraint has ended.
7. Notification of custodian and parent or guardian:
- a. The facility shall notify the custodian and parent or guardian of the resident who has been restrained as soon as possible after the initiation of each emergency safety intervention.
 - b. The facility shall document in the resident's record that the custodian and parent or guardian has been notified of the emergency safety intervention, including the date and time of notification and the name of the employee providing the notification.
8. Postintervention debriefings:
- a. Within twenty-four hours after the use of restraint, employees involved in an emergency safety intervention and the resident shall have a face-to-face discussion. This discussion must include all employees involved in the intervention except when the presence of a particular employee may jeopardize the well-being of the resident. Other employees and the custodian and parent or guardian may participate in the discussion when it is deemed appropriate by the facility. The facility shall conduct such discussion in a language

understood by the custodian and parent or guardian. The discussion must provide all parties the opportunity to discuss the circumstances resulting in the use of restraint and strategies to be used by the facility, the resident, or others who could prevent the future use of restraint.

- b. Within twenty-four hours after the use of restraint, all employees involved in the emergency safety intervention, and appropriate supervisory and administrative leadership, shall conduct a debriefing session that includes, at a minimum, a review and discussion of:
 - (1) The emergency safety situation that required the emergency safety intervention, including a discussion of the precipitating factors that led up to the emergency safety intervention;
 - (2) Alternative techniques that might have prevented the use of the restraint;
 - (3) The procedures, if any, employees are to implement to prevent any recurrence of the use of restraint; and
 - (4) The outcome of the emergency safety intervention, including any injuries that may have resulted from the use of restraint.
- c. An employee shall document in the resident's record that both debriefing sessions took place and shall include in that documentation the names of employees who were present for the debriefing, names of employees excused from the debriefing, and any changes to the resident's treatment plan that resulted from the debriefings.

History: Effective October 1, 2019; amended effective October 1, 2021.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-46. Use of special care unit.

Repealed effective October 1, 2021.

75-03-40-47. Buildings, grounds, and equipment.

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.
2. A facility must be inspected annually by the local fire department or the state fire marshal's office. A facility shall correct any deficiencies found during these inspections. The facility shall keep a written report of the annual inspection and provide a copy to the department, including evidence of correction of noted deficiencies. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.
3. There must be at least one 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy-five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag

or label securely attached indicating the month and year the maintenance check was performed last and the individual who performed the service.

4. The facility shall provide the following smoke detectors:
 - a. One unit for each bedroom hallway;
 - b. One unit at the top of each interior stairway; and
 - c. One unit for each room with a furnace or other heat source.
5. Battery-operated smoke detectors must signal when the battery is exhausted or missing and be tested at least once a month.
6. Carbon monoxide detectors must be operational as recommended by the local fire department or state fire marshal.
7. The facility must be equipped with furnishings suitable to the needs of the residents. Recreational space and equipment must be safe, functional, and available for all residents.
8. The facility shall have one centrally located living room for the informal use of residents.
9. The facility shall have a dining room area large enough to accommodate the number of residents served.
10. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.
11. A facility shall have bedroom accommodations for the residents as follows:
 - a. The facility shall have at least one bedroom for each three residents;
 - b. The facility may not permit nonambulatory residents to sleep above or below the ground floor;
 - c. There may be no more than one resident per bed, and triple bunks are prohibited;
 - d. All bedrooms must have at least one window that opens to the outside;
 - e. A sleeping room may not be in an unfinished attic, hallway, or other room not normally used for sleeping purposes;
 - f. A basement that has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms, unless the bedroom space has egress windows;
 - g. Furnishings must be safe, attractive, easy to maintain, and selected for suitability to the age and development of the residents; and
 - h. A facility shall have sufficient individual storage areas to accommodate resident's clothing and other personal belongings.
12. A facility shall have one complete bathroom to include a toilet, washbasin, and a tub or shower for each six residents and:
 - a. All bathroom facilities must be indoors, equipped with hot and cold running water, and kept clean;

- b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment; and
 - c. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.
13. Facilities shall ensure kitchen equipment and area meet the standards prescribed by the state department of health for food and beverage establishments. Compliance with these standards must be documented annually and inspection documentation must be provided to the department. A facility shall ensure:
- a. Food storage space is clean, and containers are covered and stored off the floor;
 - b. Dishes, cups, and drinking glasses used by the residents are free of chips, cracks, and other defects, and are sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher; and
 - c. Kitchen floors are reasonably impervious to water, slip-resistant, and maintained in a clean and dry condition.
14. Laundry facilities must be located in an area separate from areas occupied by residents. Space for sorting, drying, and ironing must be made available to residents who are capable of handling personal laundry.
15. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, a water sample must pass the approved drinking water standard bacteriological water analysis testing. The facility shall obtain results from an environmental protection agency approved laboratory for testing through licensing with the department of environmental quality.
16. Alcohol, tobacco, and vaping is prohibited in the facility.
17. All toxic cleaning supplies, aerosols, chemical, agricultural and ground maintenance chemicals, pesticides, and other poisons must be stored in a locked cabinet.
18. All shampoos, body wash, hand sanitizers, and perfumes, must be distributed in a limited quantity to a resident. These items must be stored in a locked cabinet when not distributed to residents.
19. Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.
20. A facility shall have a quiet area to be used for studying and furnished for that purpose.
21. All rooms in a facility must have adequate lights, heat, and ventilation. All bathrooms must have a window which opens to the outside or exhaust ventilation.
22. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.
- a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards;
 - b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of residents;
 - c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight;

- d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails;
 - e. Buildings must be free of unabated asbestos; and
 - f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.
23. Any nonhousing buildings located on the facility property must be locked when not in use by employees, nonemployees, or residents. Residents must be supervised by an employee when entering a nonhousing building.
24. All pet inoculations must comply with the local and state requirements.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-48. Food and nutrition.

1. The facility shall appoint an employee to be responsible for complying with requirements for healthy and safe food and nutrition practices.
2. All food service personnel shall have in-service training annually. Training topics must relate to proper food handling procedures, maintenance of sanitary conditions, and food service arrangements. Documentation of annual training must be kept in the employee's file.
3. Food must be in wholesome condition, free from spoilage, filth, or contamination and must be safe for human consumption. Food in damaged containers or with expired freshness dating is not considered safe for human consumption.
4. The facility shall ensure the nutritional requirements of the residents are met. The facility shall serve nutritionally balanced meals each day. Medically required special diets must be prepared for residents as needed.
5. Except for garden produce, all homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.
6. No home-canned foods may be served.
7. Frozen homegrown food products may be served if maintained in compliance with standards prescribed by the state department of health for food and beverage establishments.
8. The facility shall provide refrigeration for perishable food and shall maintain perishable food in accordance with standards prescribed by the state department of health for food and beverage establishments.
9. Employees, nonemployees, and residents helping to prepare food shall wash their hands before handling food, and as often as necessary to keep them clean, and shall use effective hair restraints to prevent contamination of food and food contact surfaces.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-49. Resident accommodations.

1. The facility shall arrange for residents to have a personal supply of clean, well-fitting clothing and shoes for both indoor and outdoor wear and appropriate for the season.
2. The facility shall make room assignments to best meet the needs and vulnerabilities of residents. The facility shall assess room assignments on an ongoing basis to minimize potential risk to residents.
3. The facility shall provide residents personal hygiene and toiletries, including washcloths and towels which must be changed when soiled, and no less often than weekly.
4. The facility shall provide residents a bed with a clean mattress and bedding. The facility shall provide additional blankets to each resident as temperatures make necessary. Sheets and bedding must be changed when soiled, and no less often than weekly.
5. A facility that assigns jobs and household responsibilities for residents shall do so in a manner that does not conflict with the education and treatment schedule or physical health of the residents or preclude the opportunity for socialization activities.
6. Participation in recreational and social activities must be on the basis of the individualized needs and treatment goals of each resident.
7. The facility shall advise all residents and the resident's custodian and parent or guardian, in writing, of the day-to-day rules of the facility. The facility shall adopt day-to-day rules that create the least restrictive environment, consistent with the treatment needs of residents. The rules must include:
 - a. A general description of acceptable and unacceptable conduct;
 - b. A resident's individual freedoms when involved in recreational or school activities away from the facility; and
 - c. Consequences for a resident who violates a facility rule.
8. The facility shall advise residents and the resident's custodian and parent or guardian, in writing, of the process used by employees to complete a search of residents or their belongings when returning to the facility from offsite outings, events, school, or home visits. The facility shall inform residents of the reason searches may be conducted, the protocol for conducting searches, and any disciplinary action a facility may take if contraband items are identified during a search.
9. A facility shall ensure privacy is made available when a custodian, parent, guardian, or family member arrives onsite to visit a resident. The facility shall record any reason for restricting communications or visits between a resident and the resident's custodian, parent, guardian or family members in the resident's file.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-50. Transportation.

This section applies to the transportation of residents in a facility-owned or leased vehicle, driven by an employee or nonemployee. A facility shall develop a comprehensive transportation policy addressing the following:

1. Driver information. A facility shall maintain a list of approved employee and nonemployee drivers. The list must indicate the name of each driver, type of license held, and the date of expiration of the license. The list must be on file at the facility.
2. Driver qualifications.
 - a. The driver must hold a current valid operator's license for the type of vehicle being driven, be at least twenty-one years of age, and have at least one year of experience as a licensed driver;
 - b. Before a driver may transport residents, the facility shall obtain a copy of their driver's license. A copy of a valid driver's license must remain in the employee or nonemployee file; and
 - c. Before a driver may transport residents, the facility initially shall check the driver's driving record for any driving safety violations. A copy of the employee's or nonemployee's driving record must be obtained annually and placed in the employee's or nonemployee's file. The facility shall develop policy to address safety-related driving violations and the ability to transport residents.
3. Vehicle capacity and supervision.
 - a. A facility shall meet employee-to-resident ratios; and
 - b. A facility shall determine if additional supervision is required to minimize risk while transporting, based on the resident's needs.
4. Vehicle operation. Any vehicle used by a facility for the transportation of residents must:
 - a. Be maintained and inspected on a monthly basis, with records of inspections maintained at the facility;
 - b. Be registered and licensed in accordance with North Dakota law and carry vehicle liability insurance;
 - c. Have a first aid kit stored inside the vehicle;
 - d. Have a log to track date and time of the transport, who was driving, and the residents in the vehicle. The log book also must list emergency contact information for community first responders and facility administration to notify in case of an accident;
 - e. Have operating seat belts for the use of all occupants on each transport;
 - f. Prohibit smoking, tobacco use, and vaping; and
 - g. Prohibit the use of a cell phone while operating the vehicle.
5. Accident report. A facility shall implement a policy for employees and nonemployees to follow when operating a facility vehicle impacted by a motor vehicle accident. In addition, the facility shall keep on file a copy of the official police report of any accident involving a facility vehicle transporting residents.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-51. Water safety.

1. For purposes of this section, "aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, or water slides. Water activities are prohibited in waters the facility knows contain health-threatening pollutants.
2. The facility shall determine the swimming ability of each resident prior to engaging in an aquatic activity. The facility may not permit any resident to participate in an aquatic activity requiring higher skills than the resident's swimming classification, except during formal instruction.
3. The facility may not permit residents to engage in an aquatic activity without adult supervision at all times and without regard to sufficient weather and resident abilities.
4. The facility shall adopt and enforce a method to account for each resident's whereabouts during aquatic activities, such as a buddy system.
5. The facility shall require all activity participants wear personal flotation devices during all boating activities, including water skiing, canoeing, tubing, and rafting.
6. Prior to any travel in any watercraft, the facility shall provide safety instructions.
7. The requirements of this section apply to activities wherever the activities take place. If the location where aquatic activity takes place does not have lifesaving equipment available, the facility is required to provide facility-owned lifesaving equipment. The facility shall provide and maintain lifesaving equipment in good repair and shall maintain documentation of equipment maintenance. All lifesaving equipment utilized by the facility must be listed in policy and immediately accessible in case of an emergency.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-52. Variance.

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance regarding a specific provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any resident cared for by the facility and no variance may be granted except at the discretion of the department. A facility shall submit a written request to the department justifying the variance. A refusal to grant a variance is not subject to appeal.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02